

Pursuant to Ind.Appellate Rule 15(A)(3), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

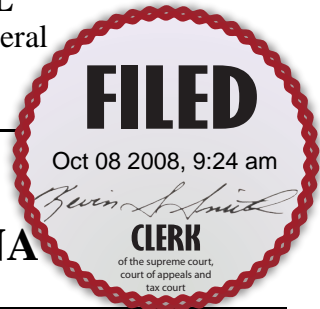
CRAIG PERSINGER
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



ERIC JACKSON,

Appellant/Defendant,

vs.

STATE OF INDIANA,

Appellee/Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 27A04-0806-CR-318

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0605-FA-104

October 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Eric Jackson appeals from his conviction for Class A Felony Dealing in Cocaine,¹ contending that the trial court abused its discretion in admitting evidence regarding the weight of cocaine-containing substance he delivered. We affirm.

FACTS

On March 23, 2006, Eric Jackson sold 3.55 grams of cocaine-containing substance to Marion Police Detective Robert Moore in a controlled buy. On June 6, 2006, the State charged Jackson with Class A felony dealing in cocaine. At trial, Indiana State Police drug chemist Christy Long testified, without objection, that the substance Jackson delivered to Detective Moore contained cocaine and weighed 3.55 grams. After a jury found Jackson guilty as charged, the trial court sentenced him to forty-five years of incarceration with five suspended to probation.

DISCUSSION AND DECISION

Whether Jackson Properly Preserved his Argument that the Trial Court Abused its Discretion in Admitting Certain Evidence

Jackson's sole contention on appeal is that evidence regarding the amount of cocaine-containing material delivered to Detective Moore should not have been admitted because the State failed to establish the accuracy of the balance used by Long. Jackson, however, did not object on that or any other basis when Long testified that the weight of

¹ Ind. Code § 35-38-4-1 (2005).

the material was 3.55 grams and so has waived the issue for appellate consideration.² It is well-settled that a defendant must object to a lack of proper foundation before the State has any obligation to establish one. *See, e.g., Mullins v. State*, 646 N.E.2d 40, 48 (Ind. 1995) (“[W]ith respect to the foundation required for the admission of breath-test results, before the prosecution has any responsibility to establish the foundation, the defense must object that the prosecution has not laid the proper foundation.”); *see also Guadian v. State*, 743 N.E.2d 1251, 1255-56 (Ind. Ct. App. 2001) (concluding that defendant waived argument that State had failed to establish accuracy of balance used to weigh drugs when he failed to object on that basis at trial).

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.

² Later, Jackson objected to the admission of Long’s certificate of analysis of the material, but it appears to have been on the basis that Long failed to testify that she had, in fact, prepared the certificate. In any event, even a successful objection to the admission of the certificate would not have affected the already-admitted testimony regarding the weight of the material.